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SUPREME COURT, U.S.

NO. 82-6950

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

COMMONWEALTH OF PENNSYLVANIA

vs.

ROBERT SANTIAGO,
Appellant

ON APPEAL FROM THE SUPREME COURT
OF PENNSYLVANIA

JURISDICTIONAL STATEMENT

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QUESTION PRESENTED

1. Is the Pennsylvania Statute which creates and defines the crime of "murder of the second degree" unconstitutional as being repugnant to the Due Process Clause of the Fourteenth Amendment of the United States Constitution where "malice", an essential element of that crime, is conclusively presumed simply from proof that a killing was done during the perpetration of a felony (felony-murder)?

NO.
IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1983

COMMONWEALTH OF PENNSYLVANIA

vs.

ROBERT SANTIAGO,
Appellant

JURISDICTIONAL STATEMENT ON APPEAL FROM
THE SUPREME COURT OF PENNSYLVANIA

1. OPINION BELOW

The Per Curiam Judgment and Order, without written Opinion, of the Supreme Court of Pennsylvania, dated April 27, 1983, affirming the Judgments of Sentence imposed by the Court of Common Pleas of Philadelphia County, Criminal Trial Division, is attached hereto in the Appendix to this Jurisdictional Statement.

The trial Court, the Court of Common Pleas of Philadelphia County, did issue a written Opinion which is attached hereto. That Opinion is reported at 5 Philadelphia County Reporter 483 (1981)

2. JURISDICTION

The judgment of sentence imposed upon appellant, Robert Santiago by the Court of Common Pleas of Philadelphia County, Pennsylvania, was affirmed, Per Curiam, by the Supreme Court of Pennsylvania on April 27, 1983. Both in the trial Court and on appeal to the Supreme Court of Pennsylvania appellant argued that the Pennsylvania statute creating and defining the crime of second degree murder (felony-murder) is unconstitutional as repugnant to the due process clause of the 14th Amendment to

the United States Constitution because the essential element of malice is conclusively presumed and imputed to the accused when a death results during the perpetration of the felony of arson.

A notice of Appeal to the Supreme Court of the United States was timely filed in the Supreme Court of Pennsylvania on June 1, 1983. A copy of that notice of appeal was also filed with the trial Court on the same date.

The jurisdiction of this Honorable Court is invoked pursuant to 28 U.S.C. § 1257 which provides, inter alia, that: "Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows: ". . . (2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution . . . of the United States, and the decision is in favor of its validity."

3. CONSTITUTIONAL PROVISION INVOLVED

The Due Process Clause of the Fourteenth Amendment to the United States Constitution provides, in pertinent part that:

" . . . nor shall any state deprive any person of life, liberty or property, without due process of law; . . . "

4. STATEMENT OF THE CASE

Appellant, Robert Santiago, was arrested on January 25, 1979 and charged with three counts of murder, arson and related offenses following a fire in a dwelling house in Philadelphia, Pennsylvania in which three persons perished.

Informations were subsequently filed against appellant charging three counts of murder, arson and other offenses.

The Informations charging murder alleged that:

"ROBERT SANTIAGO DID FELONIOUSLY, WILFULLY, AND OF HIS MALICE AFORETHOUGHT, KILL AND MURDER" (The Victim)

Pennsylvania Law divides the crime of murder into three degrees. 18 Pa. C.S. §2502. Murder of the first degree is a criminal homicide ". . .committed by an intentional killing." Murder of the second degree (the crime here in question) is defined by statute as follows (18 Pa. C.S. §2502 (b)):

"(b) Murder of the second degree. A criminal homicide constitutes murder of the second degree when it is committed while defendant was engaged as a principal or an accomplice in the perpetration of a felony."

Murder of the third degree is simply defined as follows: "All other kinds of murder shall be murder of the third degree." 18 Pa. C.S. §2502 (c).

The "Definitions" section of the statute defines "Perpetration of a felony" as: "The act of the defendant in engaging in or being an accomplice in the commission of, or an attempt to commit, or flight after committing, or attempting to commit . . . arson . . ." (and other enumerated felonies).

At trial, after the prosecution had rested its case, appellant argued to the trial Court that it could not convict him of the crime of murder of the second degree because the statute defining that crime was unconstitutional as repugnant to the Fourteenth Amendment of the United States Constitution. Appellant argued that, as charged in the Information filed against him, "malice" is an essential element of the crime of second degree murder (felony-murder) and that the statute created a conclusive presumption of "malice" merely from the fact that a killing was committed during the perpetration of arson. Appellant argued that such a conclusive presumption was irrebuttable or, at the least, shifted the burden of negating malice to the accused; that it diminished the Commonwealth's burden of proving an essential element of the offense beyond a reasonable doubt; that it conflicted with the presumption of innocence; and that the

statute was therefore unconstitutional in violation of the due process clause of the United States Constitution.

The trial Court rejected this argument and convicted appellant of three counts of murder of the second degree. Appellant filed written motions for a new trial or arrest of judgment in which he renewed his constitutional challenge to the statute. The trial Court rejected that argument once again, denied the motions, and sentenced appellant to three concurrent terms of life imprisonment.

Appellant then filed a direct appeal to the Supreme Court of Pennsylvania. In briefs filed with that Court and at oral argument appellant again argued that the Pennsylvania Statute creating and defining the crime of second degree murder (felony-murder) was unconstitutional as being repugnant to the Fourteenth Amendment to the United States Constitution. The Supreme Court of Pennsylvania rejected that argument and, on April 27, 1983, affirmed the judgments of sentence of the trial Court Per Curiam, without written opinion.

5. REASONS FOR GRANTING THE APPEAL

"Malice" is an essential element of the crime of second degree murder in Pennsylvania. As stated by the Supreme Court of Pennsylvania:

"Malice express or implied is the criterion and absolutely essential ingredient of murder." Commonwealth v. Young, 494 Pa. 224, 431 A. 2d 230, 232 (1981).

And:

" 'To sustain a conviction of murder of either degree, the evidence must establish that the killing was committed with malice.' " Commonwealth v. Gardner, 490 Pa. 421, 416 A. 2d 1007, 1008 (1980), quoting Commonwealth v. Taylor, 461 Pa. 557, 337 A. 2d 545 (1975).

The definition of second degree murder in Pennsylvania is a statutory enactment of the common law crime of felony-murder. Felony-murder, like any type of murder, requires that the Commonwealth prove the essential element of "malice" beyond a reasonable doubt.

However, in the case of second degree murder (felony-murder) the essential element of malice is conclusively imputed to the defendant when a death occurs during the perpetration of one of the enumerated felonies. Once it is shown that the accused committed the felony, and a death results during its perpetration, malice is perpetration, malice is conclusively presumed and makes the crime second degree murder. This is true even if there is no other proof or evidence of malice.

"The common law felony-murder rule is a means of imputing malice where it may not exist expressly. Under this rule, the malice necessary to make a killing, even an accidental one, murder, is constructively inferred from the malice incident to the perpetration of the felony." Commonwealth ex rel Smith v. Myers, 438 Pa. 218, 224-225 (1970).

The foundation for the felony-murder rule is the belief that:

". . . A reasonable man can be properly charged with the knowledge that the natural and probable consequences of such an act may well result in death or grievous bodily harm to those involved. . . ." Commonwealth v. Yuknavich, 448 Pa. 502, 508, 295 A. 2d 290, 293 (1972).

The Commonwealth has the unshifting burden of proving every element of an offense beyond a reasonable doubt. In re Winship, 397 U.S. 358, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970). The conclusive presumption of malice contained in the Pennsylvania statute defining second degree murder relieves the Commonwealth of that burden of proof with regard to the essential element of malice. Although proof of malice is required, it is said to be conclusively presumed merely because a death resulted during the

perpetration of a felony.

The Supreme Court of Pennsylvania has itself recognized that the presumption of malice is conclusive rather than merely permissive. In Commonwealth v. Yuknavich, 448 Pa. 502, 505, 506 (1972) the appellant argued that the "felony-murder rule should be modified so that a homicide committed by an accomplice during the perpetration of a felony would create only a rebuttable presumption . . ." (emphasis added). The Supreme Court of Pennsylvania rejected that argument as being ". . . a definite departure from the traditional felony-murder rule applied in Pennsylvania."

The theory supporting the conclusive presumption of malice in such a case - - that a "reasonable man can be properly charged with the knowledge that the natural and probable consequences of such an act may well result in death" - - is just the sort of conclusive or mandatory presumption which was held to be unconstitutional by this Court in Sandstrom v. Montana, 442 U.S. 510, 99 S. Ct. 2450, 61 L. Ed. 2d 39 (1979) wherein this Court ruled that a jury instruction that "the law presumes that a person intends the ordinary consequences of his voluntary acts" violates the due process clause of the Fourteenth Amendment. Such an instruction was repugnant to the Constitution because a reasonable juror could conclude that it was "an irrebuttable direction by the court to find intent once convinced of the facts triggering the presumption" or "a direction to find intent upon proof of the defendant's voluntary actions - - unless the defendant proved the contrary - - thus effectively shifting the burden of persuasion on the element of intent." Sandstrom v. Montana, supra, at 517, 99 S. Ct. at 2245.

The Pennsylvania statute defining second degree murder suffers from the same infirmities. The court or jury is directed

to conclusively infer malice upon a showing of the facts triggering the presumption - - the commission of a felony during which death results. The law makes no provision for the accused to be able to rebut the presumption to show the absence of malice. Even if it did, it would still be unconstitutional as shifting the burden of proof.

As stated by the United States Supreme Court in Sandstrom, supra, the "Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged." Sandstrom v. Montana, supra, 442 U.S. at 250, 99 S. Ct. at 2457 (1979); In Re Winship, supra.

Such conclusive presumptions have repeatedly been held to be unconstitutional by this Court. In Ulster County Court v. Allen, 442 U.S. 140, 99 S. Ct. 2213, 60 L. Ed. 2d 777 (1979) this Court declared a New York Statute unconstitutional which provided that, with certain exceptions, the presence of a firearm in a vehicle is presumptive evidence of its illegal possession by all persons occupying the vehicle.

In Morrisette v. United States, 342 U.S. 246, 72 S. Ct. 240, 96 L. Ed. 288 (1952) the defendant was charged with willful and knowing theft of government property. The trial Court had ruled that felonious intent was presumed from the defendant's acts. This Honorable Court reversed because "A conclusive presumption which testimony could not overthrow would effectively eliminate intent as an ingredient of the offense." 342 U.S. at 274-275, 72 S. Ct. 240, 96 L. Ed. 288.

The ruling in Morrisette was reaffirmed in United States v. United States Gypsum, 438 U.S. 422, 98 S. Ct. 2864, 57 L. Ed. 2d 854 (1978) wherein the trial Court had instructed the jury, in a case charging antitrust violations, that the law

presumes that a person intends the natural consequences of his acts. This Court reversed and stated:

"(A) defendant's state of mind or intent is an essential element of a criminal antitrust offense which -- cannot be taken from the trier of fact through reliance on a legal presumption of wrongful intent from proof of effect on prices - -

Although an effect on prices may well support an inference that the defendant had knowledge of the probability of such a consequence at the time he acted, the jury must remain free to consider additional evidence before accepting or rejecting the inference . . . (u)ltimately, the decision on the issue of intent must be left to the trier of fact alone. The instruction given invaded this factfinding function." 438 U.S. at 435, 446, 98 S. Ct. 2864, 57 L. Ed. 2d 854.

Likewise, in the present case, the defendant's state of mind (malice) is an essential element of the criminal offense of murder in the second degree and, although the defendant's action of perpetrating an arson may well support an inference that the defendant knew that death was likely to result, it is unconstitutional to conclusively rely upon the presumption of malice.

Also, in Mullaney v. Wilbur, 421 U.S. 684, 95 S. Ct. 188, 44 L. Ed. 2d 508 (1975), the defendant was charged with murder under Maine law, which required proof of malice. The trial Court instructed the jury that if the prosecution established that the homicide was both intentional and unlawful, malice was to be imputed to the accused unless the accused proved the contrary. Such a presumption was ruled to be unconstitutional and in violation of Due Process of Law.

In the present case the trial Court felt that there was no constitutional infirmity because "A person who willfully and ruthlessly plans and executes the arson of a dwelling house clearly exhibits the wickedness of disposition, hardness of heart, cruelty, recklessness of consequences which constitutes the

malice involved in the crime of murder." (Opinion of the trial Court at page 4).

This is not an answer to the issue. It misstates the issue and misunderstands the nature of appellant's challenge. Appellant is not arguing that it is unreasonable or arbitrary to presume malice from the nature of his actions, See: Leary v. United States, 395 U.S. 6, 89 S. Ct. 1532, 23 L. Ed. 2d 57 (1969), he is arguing that a mandatory reliance upon the presumption is unconstitutional.

In any event, it is no defense to the unconstitutionality of a conclusive presumption to state that there is sufficient evidence on the record to find guilt or establish the essential element of the crime without employing the presumption.

As this Court stated in Ulster County Court v. Allen, 442 U.S. 140, 99 S. Ct. 2213, 2226, 60 L. Ed. 2d 777, 794 (1979), it is:

"...irrelevant in analyzing a mandatory presumption . . . that there is ample evidence on the record other than the presumption to support a conviction."

and

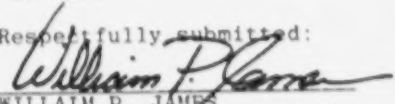
"...the analysis of the presumption's constitutional validity is logically divorced from those facts and based on the presumption's accuracy in the run of cases."

For these reasons appellant respectfully submits that the Pennsylvania statute creating and defining the crime of murder in the second degree is unconstitutional and this Honorable Court should request briefs on the merits and oral argument.

G. CONCLUSION

For the foregoing reasons appellant prays that this Honorable Court grant this appeal and order that briefs on the merits be filed and oral argument be had.

Respectfully submitted:


WILLIAM P. JAMES
Attorney for Appellant
Robert Santiago

Supreme Court of Pennsylvania

Eastern District

COMMONWEALTH OF PENNSYLVANIA

vs.


ROBERT SANTIAGO,
Appellant

No. 80-3-653

J U D G M E N T

ON CONSIDERATION WHEREOF, it is now here ordered and
adjudged by this Court that the JUDGMENTS of the COURT of
COMMON PLEAS, TRIAL DIV., CRIMINAL SECTION - PHILADELPHIA
COUNTY, be and the same ^{are} hereby AFFIRMED.

BY THE COURT:


Marlene F. Lachman, Esq.
Prothonotary

Dated: APRIL 27, 1983

[J-109]

IN THE SUPREME COURT OF PENNSYLVANIA

| | | |
|------------------------------|---|--|
| COMMONWEALTH OF PENNSYLVANIA | : | No. 80-3-653 |
| | : | |
| v. | : | Appeal from Judgments of Court of |
| | : | Common Pleas of Philadelphia, Criminal |
| | : | Trial Division, at Nos. 552, 553, 556, |
| | : | 561 and 563 February Term, 1979, |
| ROBERT SANTIAGO, | : | entered July 7, 1980 |
| Appellant | : | |
| | : | ARGUED: April 19, 1983 |

O R D E R

PER CURIAM:

FILED: APRIL 27, 1983

Judgments affirmed.

Commonwealth v. Santiago

Criminal Law—Constitutionality of Pa. Felony-Murder Rule—Probable Cause for Arrest—Voluntariness of Defendant's Statement.

(1) The Pa. felony-murder rule is not unconstitutional since it does not create a conclusive presumption or alter the Commonwealth's burden of proof.

(2) Probable cause for arrest of defendant is established where police have information which shows defendant's presence in the neighborhood, dislike toward the victims and a history of involvement with fire of an incendiary origin.

(3) A statement is not inadmissible where a defendant is confronted with results of a polygraph where under the totality of the circumstances the statement was voluntarily made.

C.P., Phila. Co., February Term, 1979, Nos. 552-563.

Leonard Ross, Assistant District Attorney, for the Commonwealth.

William James, Esquire, for Defendant.

DELLA PORTA, J., March 13, 1981

OPINION

Defendant was charged on Bills of Information Nos. 552-563 with three counts of Murder, Arson, Recklessly Endangering Another Person, Possession of Incendiary Devices, Possession of an Instrument of Crime, Causing and Risking Catastrophe and Criminal Conspiracy. Defendant pleaded not guilty to these charges and was tried before this Court sitting without a jury from May 31 to April 2, 1980, at which time the Court found the defendant guilty of three Murders in the Second Degree, Arson, Causing and Risking Catastrophe. The defendant was found not guilty of Possession of Incendiary Devices and Criminal Conspiracy. Sentence was deferred pending filing of post-trial motions and for preparation of pre-sentence and psychiatric evaluation reports.

Motions for New Trial and In Arrest of Judgment were duly filed and on July 7, 1980, were argued before this Court and Denied. On that day, the defendant was sentenced on Bills No. 553, No. 556 and No.

563 to three concurrent terms of Life Imprisonment in The State Correctional Institution, and on Bill No. 552 to another concurrent term of 10-20 years. Sentence was suspended on Bill No. 561. Bills No. 554, No. 555 and No. 562 charging Involuntary Manslaughter were merged into the Murder Bills and Bills No. 558 charging Possession of Instrument of Crime and No. 560 charging Recklessly Endangering Another Person were nolle prossed.

Defendant has appealed and we file this opinion as required.

Viewing the evidence in a light most favorable to the Commonwealth, *Commonwealth v. Brown*, 467 Pa. 388, 357 A.2d 147 (1976); *Commonwealth v. Mangini*, 478 Pa. 147, 386 A.2d 483 (1978); *Commonwealth v. Smith*, Pa. , 398 A.2d 948 (1979), the testimony indicated that on January 23, 1979, at 3:00 A.M., the defendant went to 919 West Butler Street, a house with an enclosed porch, in the City of Philadelphia, poured a can of gasoline through the mail slot of the porch door and ignited it with a match. The resulting fire burned the house and caused the death of Ocie Stokes, Rochelle Stokes and Nellie Stokes, three of its occupants.

Defendant argues that his conviction should be reversed in that the Pennsylvania Second Degree Murder Statute is unconstitutional. It provides: "A criminal homicide constitutes murder of the second degree when the death of the victim occurred while defendant was engaged as a principal or an accomplice in the perpetration of a felony." 18 Pa. C.S.A., Sec. 2502(b).

Defendant contends that the above statutory language is unconstitutional in that it creates an unlawful conclusive presumption, diminishes the Commonwealth's burden of proof and violates due process of law. The statutory language attacked by defendant is

a codification of the felony murder doctrine of the Pennsylvania Common Law.

As applied in Pennsylvania, common law felony-murder 'is a means of imputing malice where it may not exist expressly. Under this rule the malice necessary to make a killing, even an accidental one, murder, is constructively inferred from the malice incident to the perpetration of the initial felony.' *Comm. ex rel. Smith v. Myers*, 438 Pa. 218, p. 224-225, 261 A.2d 550, 553 (1970).

The nature of the felony in this case is such that it should be obvious to anyone about to embark on such a venture that the lives of the victims may be sacrificed in accomplishing the end. A reasonable man can be properly charged with the knowledge that the natural and probable consequences of such an act may well result in death or grievous bodily harm to those involved.

Comm. v. Yuknavich, 448 Pa. 502, 506, 508, 295 A.2d 290, 292, 293 (1972).

In the instant case, we find the presence of no conclusive presumption nor the failure of the Commonwealth to carry its burden of proving every element of the crime beyond a reasonable doubt. A person who willfully and ruthlessly plans and executes the arson of a dwelling house clearly exhibits the wickedness of disposition, hardness of heart, cruelty, recklessness of consequences which constitutes the malice involved in the crime of murder. The defendant's conviction of murder in the second degree under the circumstances of this case suggests no constitutional infirmity. *See: Commonwealth v. Rose*, 457 Pa. 380 (1974).

Defendant argues that it was error to admit at trial the inculpatory statement made by him while in

police custody in that it was the product of an illegal arrest and was not preceded by a knowing, voluntary, intelligent waiver of his constitutional rights.

The arrest of the defendant was found to be lawful and based on the required probable cause.

... probable cause exists if the facts and circumstances which are within the knowledge of the officer at the time of the arrest, and of which he has reasonably trustworthy information, are sufficient to warrant a man of reasonable caution in the belief that the suspect has committed or is committing a crime.

Commonwealth v. Garvin, 448 Pa. 258 (1973); *Brinegan v. U.S.*, 338 U.S. 160 (1949).

In the instant case, after being advised by the Fire Marshall that the fire was of incendiary origin, Detective Anderson personally, and through Detective Alexander, interviewed witnesses and obtained the criminal record of defendant. The cumulative weight of the information obtained indicated that defendant was in the neighborhood at the time of the fire, disliked and displayed ill will towards one of the victims and had a history of involvement with fires of incendiary origin. Since this information was sufficient to establish probable cause, the arrest was lawful and did not taint any statements subsequently obtained.

As to the issue of voluntariness, the Commonwealth has the burden of showing by a preponderance of the evidence that the defendant made a knowing, intelligent, voluntary waiver of his constitutional rights. *Commonwealth ex rel. Butler v. Rundle*, 429 Pa. 141 (1968); *Lego v. Twomey*, 404 U.S. 477 (1972); *Commonwealth v. Moore*, 454 Pa. 337 (1974).

The determination of whether there has been an intelligent waiver of right to counsel must depend in each case upon the particular facts and circumstances surrounding that case, in-

cluding the background, experience and conduct of the accused.

Johnson v. Zerbst, 304 U.S. 458, 58 S.Ct. 1019, 1023 (1968).

This defendant was arrested on January 25, 1979 at 8:10 A.M., at his residence by detectives armed with an arrest warrant. At 8:25 A.M., he arrived at the Police Administration Building and, after being placed in an interrogation room at Homicide Headquarters, was properly advised by police of his constitutional rights. Defendant indicated by his answers that he wished to waive those rights. Defendant made two initial exculpatory statements but after being confronted with the results of a polygraph examination, gave an oral and then a written inculpatory statement between 10:45 A.M. and 12:40 P.M. All of the circumstances surrounding the statements of the defendant have been examined by this Court and we agree with the findings and conclusions of the Honorable THEODORE SMITH who was the presiding judge at the hearings on the motion to suppress. At the time of his arrest, the defendant was 22 years of age. He was alert, responsive and neither his mental nor physical conditions were such as to impair his ability to contend with police questioning. He was not suffering from lack of sustenance nor coerced at any time by the police. The defendant was cognizant of all that was taking place and knowingly and of his own volition waived his constitutional rights and made the statement. Under the totality of the circumstances test, we find that the statements were voluntarily made. *Commonwealth v. Hughes*, 383 A.2d 382 (1978).

Defendant lastly argues that the verdict was contrary to the weight of the evidence and the law. In *Commonwealth v. Tate*, Pa. , 401 A.2d 353, 354 (1979), the Court stated:

To evaluate the sufficiency of the evidence, we must view the evidence in the light most favorable to the commonwealth as verdict winner, accept as true all the evidence and all reasonable inferences upon which, if believed, the jury could properly have based its verdict, and determine whether such evidence and inferences are sufficient in law to prove guilt beyond a reasonable doubt. Moreover, it is the province of the trier of fact to pass upon the credibility of witnesses and the weight to be accorded the evidence produced. The factfinder is free to believe all, part or none of the evidence. Commonwealth v. Yost, 478 Pa. 327, 386 A.2d 956 (1978).

A fair reading of the testimony in this case clearly indicates that this test was fully met.

Therefore, we have heretofore denied defendant's Motions for New Trial and In Arrest of Judgment and imposed sentence.

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SUPREME COURT
EASTERN DISTRICT

IN THE SUPREME COURT OF PENNSYLVANIA

NO. 80-3-653

COMMONWEALTH OF PENNSYLVANIA

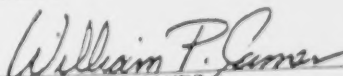
vs.

ROBERT SANTIAGO,
Appellant

NOTICE OF APPEAL TO THE SUPREME COURT
OF THE UNITED STATES

Notice is hereby given that ROBERT SANTIAGO, the above named appellant, hereby appeals to the SUPREME COURT OF THE UNITED STATES from the Judgment and Order of the Supreme Court of Pennsylvania entered on the 27th day of April, 1983, which affirmed the judgments of the Court of Common Pleas, trial division, criminal section, of Philadelphia County as of February Term, 1979, Nos. 552, 553, 556, 561 and 563.

This appeal is taken to the Supreme Court of the United States pursuant to the authority of 28 U.S.C. §1257.


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JUN 13 1983

OFFICE OF THE CLERK
SUPREME COURT, U.S.

NO. 82-6950

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

COMMONWEALTH OF PENNSYLVANIA

vs.

ROBERT SANTIAGO,

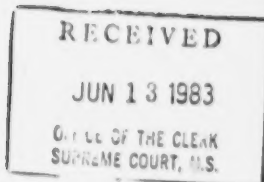
Appellant

ON APPEAL FROM THE SUPREME COURT
OF PENNSYLVANIA

MOTION FOR LEAVE TO PROCEED IN FORMA
PAUPERIS ON APPEAL TO THE SUPREME
COURT OF THE UNITED STATES

Counsel for Appellant:

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MOTION TO PROCEED IN FORMA PAUPERIS

TO THE HONORABLE, THE CHIEF JUSTICE AND THE
ASSOCIATE JUSTICES OF THE SUPREME COURT OF
THE UNITED STATES:

The Motion of Robert Santiago, Appellant, requests leave to proceed on appeal in forma pauperis and in support of said motion, respectfully represents:

1. This Motion is being filed pursuant to Rule 46 of the Rules of the Supreme Court of the United States, with an affidavit in the form prescribed by F.R.A.P. Form 4 and the statutory requirements of 28 U.S.C. §1915.

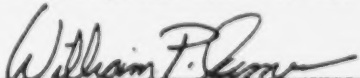
2. Appellant, Robert Santiago, is unable to afford the fees and costs of appeal, including the printing of the briefs and record, jurisdictional statement and other papers.

3. Appellant, Robert Santiago, was granted leave to proceed, and did proceed, in forma pauperis with court appointed counsel in the trial court and on appeal to the Supreme Court of Pennsylvania. Leave to so proceed was granted by the Court of Common Pleas of Philadelphia County, Pennsylvania, on November 29, 1979.

4. Appellant, Robert Santiago is incarcerated at the State Correctional Institution at Huntingdon, Pennsylvania.

5. There has been no substantial change in appellant's financial circumstances since the date he was granted leave to proceed in forma pauperis by the trial Court.

WHEREFORE, appellant, Robert Santiago, requests leave to proceed in forma pauperis on appeal to the Supreme Court of the United States.


WILLIAM P. JAMES
Attorney for Appellant
Robert Santiago

NO.
IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1983

COMMONWEALTH OF PENNSYLVANIA

vs.

ROBERT SANTIAGO,
Appellant

PROOF OF SERVICE

I hereby certify that on the day of , 1983
I served a true and correct copy of Motion for leave to proceed
in forma pauperis and affidavit in support thereof upon the
person and in the manner indicated below, which service satisfies
the requirements of Rules 10 and 28 of the Rules of the Supreme
Court of the United States. I certify that all parties required
to be served, as indicated below, have been served.

Service by hand delivery to the office of:

Robert Lawler, Esquire
Chief, Appeals Division
Philadelphia District Attorney
1300 Chestnut Street
Philadelphia, PA 19107

WILLIAM P. JAMES
Attorney for Appellant
Robert Santiago

RECEIVED

JUN 13 1983

OFFICE OF THE CLERK
SUPREME COURT, U.S.

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

COMMONWEALTH OF PENNSYLVANIA

vs.

ROBERT SANTIAGO,
Appellant

AFFIDAVIT IN SUPPORT OF MOTION TO PROCEED
ON APPEAL IN FORMA PAUPERIS

I, ROBERT SANTIAGO, being first duly sworn, depose and say that I am the appellant in the above entitled case; that in support of my motion to proceed on appeal without being required to prepay fees, costs or give security therefor, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor; that I believe I am entitled to redress; and that the issues which I desire to present on appeal are the following:

1. Is the Pennsylvania statute defining murder in the second degree (felony-murder) unconstitutional in violation of the due process clause of the 14th Amendment of the United States Constitution because the essential elements of intent and malice are conclusively presumed and imputed to the perpetrator when a death results during the perpetration of the crime of arson?

I further swear that the responses which I have made to the questions and instructions below relating to my ability to pay the cost of prosecuting the appeal are true.

1. Are you presently employed? No,

(a) If your answer is yes, state the amount of your salary or wages per month and give the name and address of your employer.

(b) If the answer is no, state the date of your last employment and the amount of the salary and wages per month which you received. 1978. \$230.⁰⁰ monthly

2. Have you received within the past twelve months any income from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends, or other source? NO.

(a) If the answer is yes, describe each source of income and state the amount received from each during the past twelve months.

3. Do you own any cash or checking or savings account?
No.

(a) If the answer is yes, state the total value of the items owned.

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)? *NO*

(a) If the answer is yes, describe the property and state its approximate value.

5. List the persons who are dependent upon you for support and state your relationship to those persons. *NO*

I understand that a false statement or answer to any questions in this affidavit will subject me to penalties for perjury.

Robert Santiago
ROBERT SANTIAGO

Sworn to and subscribed

before me this *6* day

of *June*, 1983.

Richard E. Harris
Notary Public

RYTHARD E. HARRIS, NOTARY PUBLIC
SANTAFE SPRING, HUNTERDON COUNTY
MY COMMISSION EXPIRES JUNE 4, 1984
Member: Pennsylvania Association of Notaries

Let the applicant proceed without prepayment of costs or fees or the necessity of giving security therefor.

JUSTICE